IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1) F.A.O. NO. 4529 of 2006

The Oriental Insurance Company Limited.

..... Appellant

Versus

Parmilla Devi and others.

..... Respondents

....

(2) F.A.O. NO. 4530 of 2006

The Oriental Insurance Company Limited.

..... Appellant

Versus

Sanjiv Kumar and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Amit Rawal, Advocate for the appellant.

....

Mahesh Grover,J.

This judgment will dispose of the aforementioned appeals as they have been preferred against common award dated 27.7.2006 of Motor Accident Claims Tribunal, Jagadhri (hereinafter described as `the Tribunal')

passed in M.A.C.T. Case Nos. 90 and 91 of 2004.

In a vehicular accident which took place on 23.9.2004 between a maruti car bearing registration No.DDQ-9615 and truck bearing registration No.HR-68-1107, one Salinder Kumar (driver of the car) lost his life, while Sanjiv Kumar (the other occupant of the car) sustained grievous injuries. On two separate claim petitions having been filed, the Tribunal awarded a sum of Rs.2,83,800/- on account of death of Salinder Kumar, whereas a sum of Rs.12,000/- was awarded to Sanjiv Kumar-injured along with interest at the rate of 7.5% per annum from the date of filing of the petitions till the date of realisation.

Feeling aggrieved, the Oriental Insurance Company Limited has filed the present appeals.

The principal ground of challenge as raised by the learned counsel for the appellant is that the car in question was smuggling liquor and was being driven negligently which resulted in the accident and its driver should have been held guilty of contributory negligence. He placed reliance on the contents of the F.I.R. lodged at the behest of an alleged eye witness wherein it is mentioned that both the vehicles, i.e., the car and the truck were being driven rashly.

On appraisal of the contention of the learned counsel in the back-drop of the evidence on record, it transpires that the driver of the truck is facing criminal trial for committing an offence punishable under Sections 279, 338, 304-A of the Indian Penal Code, while Sanjiv Kumar-injured has been challaned under the provisions of Section 61 of the Punjab Excise Act,1914. Even though, in the F.I.R., a mention of rash and negligent driving by the drivers of both the vehicles has been made, yet, the police,

after investigation, has found incriminating evidence only against the driver of the truck. That being so, the contention of the learned counsel for the appellant is without merit.

The second contention raised by the learned counsel for the appellant is that the driving licence of the driver of the offending vehicle was not valid and, therefore, the Insurance Company could not have been held liable to satisfy the award.

This contention is also without force as the perusal of the record shows that the onus to prove the invalidity of the driving licence has not been discharged by the appellant. The only evidence adduced by the appellant is in the form of documents Exhibits R2 and R3 which were the copies of the applications moved before the Divisional Transport Officer, Jhansi for verification of the driving licence, but no report of the concerned authority has been produced and proved on the record.

No other point has been argued.

For the foregoing reasons, we do not find any merit in the appeals and the same are accordingly dismissed.

(Uma Nath Singh)
Judge

(Mahesh Grover)
Judge

September 28,2006
"SCM"